

(2013) 12 J&K CK 0030
In the Jammu And Kashmir High Court
Case No : AA No. 13 OF 2009

Trehan Enterprises and Another	Vs	APPELLANT
State of Jammu & Kashmir and Others		RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 4 EFLT 244

Hon'ble Judges : M.M. Kumar, C.J

Bench : Single Bench

Advocate : S.K. Shukla, for the Appellant; G.S. Thakur, GA, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, C.J.—This order shall dispose of three applications' filed by the same party with a prayer for making reference of the dispute

to an independent arbitrator. It is not disputed that lease agreement dated 28.01.1974 was executed for extraction of timber from the marked trees

in consideration of lump sum royalty (Annexure A). Under clause 12 of the principal lease agreement there is a specific provision for extension of

working period of the lease in deserving cases in accordance with the government orders in force from time to time subject to furnishing of

additional security. The respondents allotted snow damaged material to all the lessees including the petitioner in their adjoining compartments by

executing supplementary agreements. As a result of additional work allotted to the petitioner, the work load increased many fold but there was no

corresponding increase in the working period. Thus the working period after providing the benefit of 2= years was re-fixed under clause 11 upto

June, 1983 and under clause 12 upto June 1984. The petitioner completed the

work and forest had been fully handed over to the department. The launching season starts in the month of September. Accordingly the timber was stacked alongside Desa Nallah. It was to be launched in

September 1985. For that purpose necessary preparations had been made, labour was engaged and advance amount had been paid to them.

However, the respondents with the help of police stopped all type of forest work inside and outside the demarcated forest, allegedly for violations

of the Jammu and Kashmir Nationalization of Forest Working Act, 1987 (for brevity the 1987 Act?).

2. There are many other claims raised in various paras of the petition. However, on account of the view I am taking it may not be necessary to

advert to every one of them.

3. The respondents have filed objections and have raised a preliminary objection, namely, that Section 3 of the 1987 Act imposes a complete ban

on forest works by private persons. The import of the Act being annulment of the existing agreement and vesting of all rights in the State, the

agreement referred in the petition had been rendered ineffective, inoperative and non-est and, therefore, the provisions of the Jammu and Kashmir

Arbitration and Conciliation Act, 1997 cannot be invoked.

4. Having heard the learned counsel for the parties on the preliminary objection, I feel that it could be examined by referring to the provisions of

Section 3 of the 1987 Act, which reads as under:-

3. Ban of Forest working by private persons:-Notwithstanding anything to the contrary contained in any law, rule, instrument, agreement or

contract or in any judgment, decree or order of any court or authority,-

(a) From the commencement of the Jammu & Kashmir Nationalisation of Forest Working Ordinance 1985 (V of 1986), no person shall fell any

tree or convert any timber or carry on the felling of any tree or conversion or removal of any timber in any demarcated Forest of the State.

(b) Any lease, contract or authority in existence at the commencement of the Jammu & Kashmir Nationalisation of Forest Working Ordinance,

1986 (V of 1986) for felling of trees or conversion or extraction of timber from such trees or for removal of timber from the demarcated forest shall

cease to have effect and right which might have accrued to any person under any such contract, agreement or authority shall stand extinguished and

shall rest in the State:

Provided that nothing in clause (b) shall effect the right of the Government to recover any amount payable to it on account of royalty, interest,

compensation, penalty or any other sum chargeable from any person by virtue of any lease contract or authority referred to above, in the manner

provided for in any such lease, contract or authority.

5. A perusal of Section 3 would show that from the date of announcement of the Forest Working Ordinance of 1985 no person was entitled to fell

any tree or convert any timber or carry on felling of any tree or conversion or removal of any timber in any demarcated forest of the State,

notwithstanding anything to the contrary contained in any law, agreement or contract or in any judgment/decreed or order of any court or authority.

There is no ambiguity in the language of Section 3 which may warrant adopting of any tools of interpretation to solve that ambiguity. Section 3

commenced with non-obstante clause which means that this provision would prevail despite anything contrary contained in any provision of law or

instrument or the judgment or decree of any court. Therefore, no question of retrospectivity would be involved.

6. However, the provisions of Section 3 are necessarily retrospective in its operation and would have the effect of nullifying any law, rule or

instrument as well as any judgment or decree or order passed by any court. Presuming that it is prospective even then the contractor? has no case.

Accordingly I proceed to examine the issue from that point of view as well.

7. In fact the aforesaid issue concerning Section 3 of the 1987 Act came up for consideration before a Division Bench of this Court in CIMA No.

128-A/2001 (Conservator of Forests and Ors. v. Sat Pal and Company decided on 17.05.2013). In that case the judgment and decree dated

28.08.2000, which made the award passed by the arbitrator as rule of the Court, was under consideration. On the basis of the argument raised

that Section 3 of the 1987 Act would come in way, the matter was considered by the Division Bench. The Division Bench analyzed the provisions

of the Act and various judgment like Garikapatti Veeraya Vs. N. Subbiah Choudhury, , State of Himachal Pradesh Vs. Narain Singh, and Goa

Glass Fibre Ltd. Vs. State of Goa and Another, and concluded as under:-

On precedents and principles it stands established that Legislature enjoys

sovereign power to frame law which may operate even retrospectively as long as it does not encroach upon the judicial powers of adjudication vested in the Court or it does not annul a valid decision of the Courts given inter partes without wiping out its basis. Once the aforesaid legal position is clear beyond any doubt, then the fate of the present case becomes obvious. The judgment of the Division Bench of this Court rendered in the case of Baldev Singh has taken the view that Section 3 of the Forest Working Act would prevail and the judgment and decree obtained by a contractor would not give rise to any executable rights. The conclusion reached by the Division Bench by adopting a different reasoning reads as under:

A perusal of the above reproduced provision shows that the non-obstinate clause of Section 3 makes the Act enforceable in supersession of any law, rule, instrument, agreement or contract, decree or order of any Court or authority. The award is an order of an authority. This order emanates out of an agreement between the parties. When obviously the agreement between the parties and the award of the arbitrator are coming within the purview of this non-obstinate clause of section 3 of the Act, it was not possible for the learned Single Bench to act upon the award and make it a rule of the Court. Learned Single Bench has rightly dealt with interpretation of section 3 of the Act as against the agreement and the award mentioned above. The argument of Mr. Jalali that the Act only nationalized the operation of works in the forests and not the forests, cannot be accepted by us. We in the light of a total ban on forest working laid down in terms of section 3 (supra) have no difficulty in coming to the conclusion that the leases and the contracts existing at the time of promulgation of Forest Working Ordinance 1986 would be rendered non-est and the rights flowing from such agreement, contract or authority in favour of a private person had extinguished and the same vested in the State.

Section 6 of the Act seems to have taken care of the claims of those persons affected by the Act empowering the Government to appoint an authority to determine such claims. A Forest Authority under the Forest Act has been constituted by the Government to look into such claims in terms of section 52(c) of the Forest Act, 1982. In our opinion, after promulgation of the Act, the award passed by the Arbitrator was contravening the Act and was, therefore, invalid. Thus the learned Single Bench while setting

aside the award has acted in accordance with the mandate of section 30 of the Arbitration Act. In this view of the matter, we do not find any substance in this appeal and dismiss the same.

8. When the aforesaid principles are applied to the facts of the case in hand, it becomes evident that section 3 would operate retrospectively notwithstanding anything contrary to the rule, instrument, agreement or contract or any judgment/decreed. All such agreement/contracts would cease to have effect and all rights which might have accrued to any person were to stand extinguished. Such rights were to vest in the State. On basis of the aforesaid rationale it has to be held that it would prove to be a futile exercise to make a reference to the arbitrator. In the judgment of Division Bench once the award dated 13.09.1992, which became rule of the Court on 28.08.2000 was not accepted as worthy of implementation, then making a reference at this stage would certainly be a futile exercise and wholly unnecessary. Therefore, Section 3 of the 1987 Act would have its full play. For the aforesaid reasons these applications are dismissed. However, the petitioners are liberty to work out their remedy in accordance with law.